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Jerry Dwight Doty II

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MARGER JOHNSON & MCCOLLOM, P.C.  
210 SW MORRISON STREET, SUITE 400  
PORTLAND, OR 97204

EXAMINER

LE, KAREN L

ART UNIT

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* JERRY DWIGHT DOTY, III,  
LUIS A. VIRIATO, and RONALD ROYCE MEADOWS

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Appeal 2009-009478  
Application 09/753,307  
Technology Center 2600

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Before ALLEN R. MacDONALD, THOMAS S. HAHN and  
ELENI MANTIS MERCADER, *Administrative Patent Judges*.

MacDONALD, *Administrative Patent Judge*.

DECISION ON APPEAL<sup>1</sup>

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

## STATEMENT OF CASE

### *Introduction*

Appellants appeal under 35 U.S.C. § 134 from a final rejection of claims 1-19. We have jurisdiction under 35 U.S.C. § 6(b).

### *Exemplary Claim(s)*

Exemplary independent claim 1 under appeal reads as follows:

1. A method for switching active calls between entities on a network device, the method comprising:
  - determining that a time has been reached for an upgrade of firmware on a first processor that is still actively handling calls;
  - collecting information about a current call on the first processor while the current call is being processed by a first entity;
  - initializing a second processor residing in the network device with the first processor with the information while the current call is being processed on the first processor;
  - switching the current call from the first processor to the second processor;
  - releasing the first processor from further processing of the call; and
  - repeating the switching of the current call from the first processor until the first processor is free from all active calls for maintenance.

*Examiner's Rejections*

1. The Examiner rejected claims 1-4, 6, 7, and 9-19 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Chong (US 6,205,557 B1) and Denby (US 6,976,062 B1).

2. Examiner rejected claims 5 and 8 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Chong, Denby, and Zeck (US 2002/0101605 A1).

*Appellant's Contentions*

1. Appellants contend that the Examiner erred because:

(A) As to claim 1, “[t]he combination [of Chong and Denby] does not teach initializing a second processor while a current call is being processed on a first processor.” (App. Br. 9).

(B) As to claim 1, “[t]he combination [of Chong and Denby] does not teach repeating the switching of calls from the first processor.” (App. Br. 9).

(C) As to claim 12, again the combination does not teach repeating the switching of calls (App. Br. 15).

*Issues on Appeal*

Whether the Examiner has erred in rejecting claims 1-19 as being obvious because the references fail to teach the above argued limitations?

**ANALYSIS**

Appellants present numerous arguments as to why the Examiner has erred. (App. Br. 6-17). We agree only with Appellants' contentions numbered as 1 A-C above.

### CONCLUSIONS

(1) Appellants have established that the Examiner erred in rejecting claims 1-19 as being unpatentable under 35 U.S.C. § 103(a).

(2) On this record, claims 1-19 have not been shown to be unpatentable.

### DECISION

The Examiner' rejections of claims 1-19 are reversed.

REVERSED

KIS

MARGER JOHNSON & MCCOLLOM, P.C.  
210 SW MORRISON STREET, SUITE 400  
PORTLAND, OR 97204